

A dietary supplement could be classified as a food taxed at the low rate of tax if it is not sold for immediate consumption. See Ill. Adm. Code 130.310 (This is GIL).

June 6, 2002

Dear Xxxxx:

This letter is in response to your letter dated March 5, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

AAA requests a written opinion as to the sales taxability to our customers on the purchase of the following item:

BBB. (Please see attached information)

Thank you in advance for your assistance in this matter. Please call me if you have any further questions or need any additional information.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (2000 State Bar Edition). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (2000 State Bar Edition).

Please find enclosed a copy of 86 Ill. Adm. Code 130.310 regarding the appropriate tax rates for food, drugs, medicines and medical appliances. As you can see at Section 130.310(b)(1), "[a] food is any solid, liquid, powder, or item intended by the seller primarily for human internal consumption, whether simple, compound, mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice." A medicine or drug is "any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities." See Section 130.310(c)(1).

In general, nutritional supplements and vitamins are included within the definition of food. The product you describe in the literature included in your letter would classify as a food, drug, or medicine as defined by 86 Ill. Adm. Code 130.310.

Taxation of food at the reduced sales tax rate depends on whether the food is prepared for immediate consumption or for consumption off the premises where sold; therefore, the nature of the

premises where the food is sold is a factor in determining the applicable sales tax rate. All sales by a retail establishment that provides facilities for on-premises consumption of food are subject to the high rate of tax unless the facility utilizes a separate means of recording and collecting receipts from food for consumption on the premises, and the area where food not for immediate consumption is sold is physically partitioned from the area of food sold for immediate consumption. Please see 86 Ill. Adm. Code 130.310(b)(2)(A) and (b)(3).

Where an establishment does not provide facilities for on-site consumption, the business would still charge a high rate of tax on all food sales if a majority of the gross receipts from food resulted from food items sold in a state of preparation for immediate consumption. However, where an establishment primarily sells food (over 50%) in bulk, such establishment would incur the reduced rate on all food items, except soft drinks, food prepared for immediate consumption and alcoholic beverages, which are always taxed at the high rate.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Shane McCreery

By:

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SM:JTG:msk

Enc.